

§ 107.329

agreement, he directs that the proceeding continue. An agreement submitted to the Chief Counsel must include:

- (i) A statement of any allegations of fact which the respondent challenges;
- (ii) The reasons why the terms of a compliance order or proposed compliance order are or would be too burdensome for the respondent, or why such terms are not supported by the record in the case;
- (iii) A proposed compliance order suitable for issuance by the Chief Counsel;
- (iv) An admission of all jurisdictional facts; and
- (v) An express waiver of further procedural steps and all right to seek judicial review or otherwise challenge or contest the validity of the order.

(b) Notwithstanding paragraph (a)(1) of this section, the respondent or Office of Chief Counsel may propose to settle the case. If the Chief Counsel agrees to a settlement, the respondent is notified and the case is closed without prejudice to the respondent.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended at 50 FR 45730, Nov. 1, 1985; Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991; Amdt. 107-29, 58 FR 51527, Oct. 1, 1993; 66 FR 45377, Aug. 28, 2001]

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or an exemption issued under this subchapter applicable to the transporting of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than \$25,000 (\$27,500 for a violation occurring after January 21, 1997) and not less than \$250 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or an exemption issued under this subchapter applicable to the manufacture, fabrication, marking, maintenance, recondi-

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tioning, repair, or testing of a packaging or container which is represented, marked, certified or sold by that person as being qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than \$25,000 (\$27,500 for a violation occurring after January 21, 1997) and not less than \$250 for each violation.

[Amdt. 107-24, 56 FR 8624, Feb. 28, 1991, as amended by Amdt. 107-32, 59 FR 49131, Sept. 26, 1994; Amdt. 17-40, 62 FR 2971, Jan. 21, 1997; 65 FR 58618, Sept. 29, 2000]

§ 107.331 Assessment considerations.

After finding a knowing violation under this subpart, the Office of Chief Counsel assesses a civil penalty taking the following into account:

- (a) The nature and circumstances of the violation;
- (b) The extent and gravity of the violation;
- (c) The degree of the respondent's culpability;
- (d) The respondent's prior violations;
- (e) The respondent's ability to pay;
- (f) The effect on the respondent's ability to continue in business; and
- (g) Such other matters as justice may require.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-30, 58 FR 50500, Sept. 27, 1993; Amdt. 107-38, 61 FR 21100, May 9, 1996]

CRIMINAL PENALTIES

§ 107.333 Criminal penalties generally.

A person who knowingly violates §171.2(g) or willfully violates a provision of the Federal hazardous material transportation law or an order or regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-32, 59 FR 49131, Sept. 26, 1994]

§ 107.335 Referral for prosecution.

If the Associate Administrator becomes aware of a possible willful violation of the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter, or any exemption, or order issued thereunder,